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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

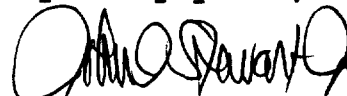
Re: **Emergency Petition for Expedited Rulemaking**

Dear Ms. Searcy:

Enclosed for filing on behalf of Fouce Amusement Enterprises, Inc., are an original and four (4) copies of an Emergency Petition for Expedited Rulemaking requesting the amendment of Section 76.51 of the Commission's Rules to add Riverside, California to the Los Angeles-San Bernardino-Corona-Fontana market designation.

If there are any questions concerning this matter, please contact the undersigned.

Very truly yours,



John I. Stewart, Jr.

Enclosures

cc: Alexandra M. Wilson, Esq. (By hand)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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MAY - 5 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 76.51,)
Major Television Markets) RM-
(Los Angeles-San Bernardino)
Corona-Fontana-Riverside))

To: Chief, Mass Media Bureau

EMERGENCY PETITION FOR EXPEDITED RULEMAKING

Pursuant to Section 1.401 of the Commission's Rules, Fouce Amusement Enterprises, Inc. ("Fouce"), licensee of television station KRCA, Riverside, California, hereby petitions the Commission to institute an expedited rulemaking proceeding to amend Section 76.51 of its Rules to redesignate the Los Angeles-San Bernardino-Corona-Fontana television market as the "Los Angeles-San Bernardino-Corona-Fontana-Riverside" market. This amendment is necessary on an emergency basis in order to avoid discriminatory and irrational application of the Commission's must-carry rules to KRCA's immediate and severe detriment.

I. RIVERSIDE IS PART OF A SINGLE TELEVISION MARKET, CURRENTLY DESIGNATED AS THE LOS ANGELES-SAN BERNARDINO-CORONA-FONTANA MARKET.

There can be no question that Riverside, California is part of the Los Angeles television market. Geographically, the community is located at approximately the same distance from the

center of Los Angeles as, and is virtually surrounded by, the cities of San Bernardino, Corona and Fontana, which are included as listed communities in the hyphenated market designation set out in Section 76.51. See Exhibit A. Indeed, Riverside's 35-mile zone is virtually entirely encompassed within the combined 35-mile zones of San Bernardino, Corona and Fontana, resulting in the anomaly of a "smaller" television market being wholly contained within a major market. See Newark, New Jersey, 47 FCC 2d 752 (1974).

KRCA's Grade B contour completely encompasses all of the communities in the existing hyphenated market, as do those of the other stations licensed to the listed communities. See Exhibit B; see also Television & Cable Factbook, Stations Vol. 61, pp. A-123 - A-136 (1993). KRCA also provides city grade service to Los Angeles. See Exhibit B. Since the area thus relied on by KRCA for economic support is contained within, or virtually the same as, the area relied on by the Los Angeles, San Bernardino, Corona, and Fontana stations, all of the stations compete in the same market. The Commission has concluded in even less compelling circumstances that communities such as these constitute a single television market. See, e.g., Orlando-Daytona Beach-Melbourne-Cocoa, Florida, 102 FCC 2d 1062 (1985).

As with the other stations whose service contours cover the market, KRCA is licensed to serve the Los Angeles metropolitan area. In addition, its transmitter is located at the same site on Sunset Ridge as those of KSCI and KZKI, both licensed to "listed"

community San Bernardino. But KRCA was not in existence in 1972, when the market designations were initially determined. Riverside could thus not have been considered for inclusion in the original market designation. However, given the facts presented here, the Commission doubtless would have designated Riverside as part of the Los Angeles hyphenated market when it initially established the major market list. See Id. at 1072.

**II. KRCA WILL BE AT A SEVERE COMPETITIVE DISADVANTAGE
UNLESS ACCORDED THE SAME MANDATORY CARRIAGE STATUS
AS THE OTHER STATIONS IN THE HYPHENATED MARKET.**

Under the copyright law, cable television systems must pay royalty fees for carriage of distant, as opposed to local, television stations. Stations licensed to communities specifically designated as part of a major hyphenated market are considered local for all cable systems within the 35-mile zones of all of the listed communities. Since Riverside was not included as part of the 1972 designation of the market, however, it is considered distant in areas more than 35 miles from Riverside, notably including significant portions of Los Angeles and the San Fernando Valley. KRCA has received notices from various cable systems within the ADI advising it pursuant to new Section 76.58(d) of the Commission's Rules that they will not provide mandatory carriage unless it agrees to reimburse well over two million dollars annually in copyright royalty fees.

KRCA competes for audience and revenues with network affiliated and independent stations licensed to Los Angeles, San

Bernardino, Corona, and Fontana. Each of these stations is entitled to royalty-free mandatory carriage on cable systems within the entire market by virtue of their communities' designation as part of the hyphenated market. KRCA will be severely -- perhaps fatally -- disadvantaged in its ability to compete in the market if it cannot obtain carriage on the local market cable systems on the same royalty-free basis as all its competitors.

The fact that KRCA is an independent station increases its competitive burden. Unlike the other independent stations in the hyphenated market, which are entitled to mandatory cable carriage, KRCA cannot assure program owners or advertisers of access to the entire market, which it serves over the air but needs cable carriage to reach effectively. KRCA's competitive position will thus be further undermined.

III. KRCA CANNOT CONTINUE TO SERVE THE COMMUNITY WITHOUT ACCESS TO THE ENTIRE MARKET.

Access to the entire Los Angeles market is controlled to a large extent by cable television systems, since terrain features make over-the-air reception difficult in various heavily populated areas. Because of the huge copyright fees being demanded for its carriage, KRCA would be unable to gain the same access as the other stations with which it competes. Inclusion of Riverside in the market designation will enable the cable systems to carry KRCA without incurring additional copyright royalty liability, thus eliminating the competitive inequality of the present designation. Failure to rectify this anomalous situation may result in the

demise of KRCA, or, at a minimum, a drastic reduction in its ability to provide service.¹ On the other hand, allowing equal treatment of KRCA by local cable systems will not expand its reach significantly beyond its Grade B signal coverage or beyond the service areas of all the other stations in the market, which are already entitled to royalty-free carriage.

**IV. THE FACTORS PREVIOUSLY CONSIDERED BY THE COMMISSION
IN AMENDING SECTION 76.51 COMPEL INCLUSION OF
RIVERSIDE IN THE LOS ANGELES HYPHENATED MARKET.**

In earlier modifications of market designations, the Commission considered four factors in making its determinations.

Fresno-Visalia, California, 57 R.R.2d 1122, 1124 (1985); Orlando-Daytona Beach-Melbourne-Cocoa, Florida, 102 FCC 2d 1062, 1073 (1985). These factors are identified separately below. All favor the addition of Riverside to the Los Angeles hyphenated market designation:

1. The distances between Riverside and the existing communities in the hyphenated market clearly favor inclusion of Riverside in the market. For example, San Bernardino, which is already included in the hyphenated market, lies at a greater distance from the center of Los Angeles than does Riverside, yet is already entitled to royalty-free mandatory carriage on Los Angeles cable systems.

¹ KRCA provides children's programming and locally produced public affairs programming. It has broadcast home shopping programming in the past, but is commencing a format featuring Asian and other foreign language programming that serves the interests of large minority populations in the market.

2. KRCA's market will not be expanded to any significant degree. The Grade B contour of KRCA is similar to the Grade B contours of the other stations in the hyphenated market, and already extends beyond Los Angeles to the approximate limits of its 35-mile zone. See Exhibit B. Designation of Riverside as part of the market will thus entitle KRCA to royalty-free cable carriage principally within its current service area.

3. KRCA has shown a particularized need for redesignation of the market, given the severe competitive disadvantage under which it would otherwise be forced to operate.

4. Assuring KRCA access to cable subscribers in Los Angeles and the San Fernando Valley will provide substantial benefits to the public through the variety and quality of the programs it offers, particularly because of its focus on foreign-language and minority programming.

CONCLUSION

Redesignation of the Los Angeles-San Bernardino-Corona-Fontana market to include Riverside will not only place KRCA on a level playing field with its competitors, but will comport with the stated purpose of the FCC to ensure that stations have access to cable subscribers and subscribers have access to all stations in the market. KRCA respectfully requests the Commission promptly

to commence an expedited proceeding to accomplish this redesignation, so that mandatory cable carriage of KRCA on the same basis as all other stations within the market may begin as soon as possible.

Respectfully submitted,

FOUCE AMUSEMENT ENTERPRISES, INC.

By



John I. Stewart, Jr.
Katherine K. White

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Its Attorneys

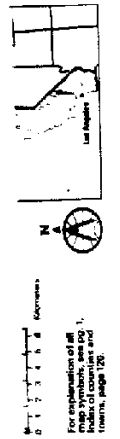
May 5, 1993

EXHIBIT A

Approximate city boundaries
of Riverside, San Bernardino,
Corona and Fontana

a. Vicinity

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Notes: (page 170)



San Fernando Museum, B. 8
Riverside Museum of Geology, B. 22
San Diego Museum of Natural History, C. 28
South Coast Botanical Garden, K. 8
Van Nuys Museum, E. 10
Van Nuys State Historic Park, F. 5

California State Museum, F. 18
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